

For Immediate Release
March 3, 2004

PUBLIC NOTICE

United States District Court District of Minnesota

Federal Court Proposes Local Rule Amendments to Allow Electronic Case Filing

The U.S. District Court for the District of Minnesota is seeking public comment on proposed amendments to its local rules of practice. The proposed amendments will facilitate the Court's implementation of Electronic Case Filing ("ECF") which will allow attorneys to file documents from their offices by computer. Additional information about ECF will be provided by a set of written standards and procedures entitled "Electronic Case Filing Procedures for the District of Minnesota," which will be promulgated shortly after the proposed amendments to the Local Rules have been approved. The amendments were recommended by the Court's Federal Practice Committee chaired by attorney Jeff Keyes, of Briggs & Morgan in Minneapolis.

Attached to this public notice is a synopsis of the proposed local rule revisions. Comments are due by **April 2, 2004** and may be sent to an e-mail box at mnfedrules@mnd.uscourts.gov or by mail to:

Richard D. Sletten, Clerk
Attn: Local Rules Committee
U.S. District Court
300 South Fourth Street, Suite 202
Minneapolis, MN 55415

Public comments will be compiled and presented to the Court in April, along with any final proposed modifications. The rules will be adopted by the full Court following consideration of all comments. The new rules effective date will be announced in the near future.

Copies of the proposed amendments, as well as the current local rules are available for reference on the court's web site at www.mnd.uscourts.gov; in the Office of the Clerk in St. Paul, Minneapolis, or Duluth; or by contacting the Clerk of Court at the address above.

If you have questions about the amendments, please contact Wendy Osterberg, Chief Deputy at (612) 664-5000.

PROPOSED LOCAL RULE CHANGES

Approved by the Federal Practice Committee on January 14, 2004

and the Bench on January 22, 2004

Posted for Public Comment on March 3, 2004

Local Rule 5.1

Current:

LR 5.1 GENERAL FORMAT OF PAPERS PRESENTED FOR FILING

1. All pleadings, motions, and other papers presented for filing shall be on 8½ x 11 inch white paper of good quality, flat and unfolded, and shall be plainly typewritten, printed, or prepared by a clearly legible duplication process, and double-spaced, except for quoted material and footnotes. All documents filed after the initial pleading shall contain the case number and the name and/or initials of the District Court Judge and Magistrate Judge assigned to the case. This information shall be placed on the front page above the title of the pleading. Each page shall be numbered consecutively at the bottom. The Clerk will not accept for filing any papers transmitted electronically or by facsimile.

The first two sentences of this rule do not apply to: (1) exhibits submitted for filing; and, (2) documents filed in removed actions prior to removal from the state courts.

All papers filed shall include the attorney registration number of counsel filing the paper.

[Adopted effective February 1, 1991; amended November 1, 1996; amended

January 3, 2000]

Proposed:

LR 5.1 ELECTRONIC CASE FILING

Pursuant to Fed. R. Civ. P. 5(e), electronic case filing is authorized in the District of Minnesota, and shall be adopted and implemented by Order of the Court. Electronic case filing shall be governed by the standards and procedures set forth in the most recently approved version of the "Electronic Case Filing Procedures For The District Of Minnesota," adopted by Order of the Court. The Electronic Case Filing Procedures shall apply to all civil and criminal cases filed in this District. All documents shall be filed electronically, except as otherwise provided by (i) Local Rule, (ii) specific court order, or (iii) the Electronic Case Filing Procedures for the District of Minnesota. The most recent version of the Electronic Case Filing Procedures shall be available on the Court's web site and from the Clerk of Court. Nothing in the Electronic Case Filing Procedures for the District of Minnesota alters the rules governing the computation of deadlines for filing and serving documents that are set forth at Fed. R. Civ. P. 6(a) and Local Rule 1.1(f).

Local Rule 5.2

Current:

LR 5.2 FILING PROCEDURES

1. (a) Filing original documents. Whenever a party seeks to file any document with the Court, the party shall deliver the original document to the Clerk of Court with a request that it be filed. The document will be filed as of the date when it is actually received by the Clerk. Documents may be delivered to any divisional office of the Clerk of Court for filing.

(b) Motion papers.

(1) Motions heard by District Court Judges. A party filing a motion that will be heard by a District Court judge, and briefs, affidavits and other papers in support of the motion, shall:

(A) File one original set of motion papers.

(B) Identify the original motion papers by stamping or writing the word "original" on the first page of each original document.

(C) File two additional copies of the motion papers.

(D) Identify the copies of the motion papers by stamping or writing the word "copy" on the first page of each document.

(E) File the two additional copies in an envelope separate from the envelope used to file the original papers.

(F) Mark the envelope containing the copies for delivery to the calendar clerk for the judge who will hear the motion.

(2) Motions heard by Magistrate Judges. A party filing a motion that will be heard by a Magistrate Judge shall comply with the rules set forth in paragraph (1), with the following modification: The party need file only one original and one copy of the papers.

[Adopted effective January 3, 2000]

Proposed:

LR 5.2 GENERAL FORMAT OF DOCUMENTS TO BE FILED -- ELECTRONICALLY OR OTHERWISE

All documents submitted for filing, electronically or otherwise, shall be plainly typewritten,

printed, or prepared by a clearly legible duplication process, and double-spaced, except for quoted material and footnotes. All documents filed after the initial pleading shall contain the case number and the name and/or initials of the District Court Judge and Magistrate Judge assigned to the case. This information shall be placed on the front page above the title of the pleading. Each page shall be numbered consecutively at the bottom.

The first two sentences of this rule do not apply to: (1) exhibits submitted for filing; and, (2) documents filed prior to removal from the state courts in removed actions.

All documents presented for filing shall include the attorney registration number of counsel filing the document.

Local Rule 5.5 (will be renumbered as Local Rule 5.3)

LR 5.3 DEADLINE FOR FILING ANSWERS

1. All answers and other papers required by Fed. R. Civ. P. 5(d) to be filed shall be filed within 10 days after service thereof; such period is deemed a reasonable time within the meaning of Fed. R. Civ. P. 5(d).

See LR 1.3 for sanctions for failure to comply with this rule.

[Adopted effective February 1, 1991]

NEW LOCAL RULE

LR 5.4 SERVICE OF DOCUMENTS THROUGH THE COURT'S ELECTRONIC TRANSMISSION FACILITIES

The service requirements of Fed. R. Civ. P. 5(a) can be satisfied by using the Court's electronic transmission facilities in the manner prescribed by the most recently adopted version of the Electronic Case Filing Procedures for the District of Minnesota.

2004 Advisory Committee Note to LR 5.4

The 2001 Amendments to the Federal Rules of Civil Procedure permitted district courts to authorize service by electronic means "through the court's transmission facilities." Fed.R.Civ.P. 5(b)(2)(D). Accordingly, new Local Rule 5.4 explicitly authorizes service by electronic means via the court's electronic filing facilities.

The 2001 Amendments also provided that the additional three days established in Rule 6(e) for service by mail

applies to service by electronic means. Fed.R.Civ.P. 6(e).

Counsel are encouraged to consult the electronic service provisions of the Federal Rules of Civil Procedures, as amended in 2001. LR 5.4 does not modify the Federal Rules in any way.

Counsel are encouraged, further, to consult the most recently adopted version of the Electronic Filing Procedures for the District of Minnesota for further clarification on administrative procedures for filing and serving by electronic means.

Local Rule 7.1

Local Rule 7.1 Civil Motion Practice - **NOTE NEW BRIEFING DAYS IN RED** (this is a change from the rule in effect 1/1/04).

- (b) **Dispositive Motions.** Unless otherwise ordered by the district judge, dispositive motions in any civil case shall be heard by the judge to whom the case is assigned. Hearings may be scheduled by contacting the calendar clerk of the appropriate judge.
- (1) *Moving Party; Supporting Documents; Time Limits.* No motion shall be heard by a district judge unless the moving party files and serves the following documents in accordance with ~~Local Rule 5.2~~ Local Rule 5.1 et seq., the Electronic Case Filing Procedures, and Fed. R. Civ. P. 5(b) at least ~~31~~ **45** days prior to the hearing:

- (A) Motion
- (B) Notice of Motion
- (C) Proposed Order
- (D) Affidavits and Exhibits
- (E) Memorandum of Law

~~Affidavits and exhibits shall not be attached to the memorandum of law and shall contain a title page designating the title and file number of the action.~~

- (2) *Responding Party; Supporting Documents; Time Limits.* Any party responding to the motion shall file and serve the following documents in accordance with ~~Local Rule 5.2~~ Local Rule 5.1 et seq., the Electronic Case Filing Procedures, and Fed. R. Civ. P. 5(b) at least ~~10~~ **20** days prior to the hearing:

- (A) Memorandum of Law
- (B) Affidavits and Exhibits

~~Affidavits and exhibits shall not be attached to the memorandum of law, and shall contain a title page designating the title and file number of the action.~~

- (3) *Reply Memorandum.* The moving party may submit a reply memorandum of law by filing and serving such memorandum in accordance with ~~Local Rule 5.2~~ Local Rule 5.1 et seq., the

Electronic Case Filing Procedures, and Fed. R. Civ. P. 5(b) at least 5 **12** days prior to the hearing.

Local Rule 7.2

LR 7.2 PROCEDURES IN SOCIAL SECURITY CASES

1. (a) Filing an Answer.

(1) Within 60 days of the service upon the United States of a pleading under 42 U.S.C. § 405(g), the Secretary of Health and Human Services shall deliver to the Clerk of Court an answer and a certified copy of the transcript of the record.

(2) A motion to extend the time in which to answer shall be brought prior to the expiration of the 60 day period.

(b) Motions - Time Limits.

(1) Within 60 days of the filing and service of the answer and transcript, plaintiff shall deliver to the Clerk of Court and serve on defendant a motion for summary judgment and a memorandum of law in support. Within 45 days from the date of service of plaintiff's motion, defendant shall deliver to the Clerk of Court and serve on plaintiff a motion for summary judgment and a memorandum of law in support. Plaintiff may submit a reply memorandum. The reply memorandum shall be delivered to the Clerk of Court and served on defendant within 10 days from the date of service of defendant's motion.

(2) All motions shall be decided without oral argument unless otherwise ordered by the Court.

(3) Pursuant to Fed.R.Civ.P. 72(b) and the provisions of 28 U.S.C. § 636(b)(1)(B), within 10 days after being served with a copy of a Magistrate Judge's report and recommendation, any party seeking to object to the same shall deliver to the Clerk of Court and serve on the opposing party written objections to the proposed findings and recommendations. Any party objecting to a magistrate judge's proposed findings and recommendation shall file a brief within 10 days after being served with a copy of the recommended disposition. A party may respond to the objecting party's brief within 10 days after being served. All briefs filed under this rule shall be limited to 10 pages.

(c) Review After Remand When Courts Retain Jurisdiction.

(1) Within 60 days of the final decision of the Secretary of Health and Human Services upon remand, if the final decision upon remand is adverse to the plaintiff, the Secretary shall deliver to the Clerk of Court and serve a supplemental transcript.

(2) If the plaintiff intends to seek review of the Secretary's action following remand, within 60 days of the service of the supplemental transcript on plaintiff, plaintiff shall deliver to the Clerk of Court and serve on defendant a motion for summary judgment and a memorandum of law in support. Within 45 days from the date of service of plaintiff's motion, defendant shall deliver to the Clerk of Court and serve on plaintiff a motion for summary judgment and a memorandum of law in support.

(d) Attorney's Fees.

(1) Petitions for fees under the Equal Access to Justice Act shall be filed within 30 days of final judgment as defined by 28 U.S.C. § 2412.

(2) Petitions for fees under the Social Security Act shall be filed within 30 days of notice to plaintiff's attorney of the Secretary's award certificate.

(3) Petitions for attorney's fees under Internal Revenue Code 26 U.S.C. § 7430 shall be filed within 30 days of final judgment.

(4) Petitions shall be itemized, shall be served on the defendant, and filed. ~~pursuant to LR 5.2.~~ Attorneys are directed to 20 C.F.R. § 404.1725 when preparing their petitions.

[Adopted effective November 1, 1996; amended January 3, 2000]

1996 Advisory Committee's Note to LR 7.2

LR 7.2(b)(3) was amended to properly refer to "Magistrate Judge" rather than "Magistrate".

LR 7.2(c) was amended so that it applies only to cases remanded under sentence six of 42 U.S.C. § 405(g) where the Court has retained jurisdiction. See Note accompanying LR 7.2(d).

LR 7.2(d)(1): Although this paragraph was not amended, practitioners should be aware that the date which triggers the time for filing a motion or petition for attorney's fees varies in Social Security cases remanded by the Court to the Secretary depending on which sentence of 42 U.S.C. § 405(g) authorized the remand.

In Melkonyan v. Sullivan, 501 U.S. 89 (1991), the Supreme Court discussed the time for filing a petition for attorney's fees under the Equal Access to Justice Act (EAJA) in Social Security appeals. The Supreme Court recognized that under 42 U.S.C. § 405(g), a federal district court has the authority to remand a Social Security appeal under two separate and distinct circumstances.

The Court may, under the fourth sentence of § 405(g), "enter . . . a judgment affirming, modifying, or reversing the decision of the Secretary, with or without remanding the cause for a rehearing." If the Court remands the cause for a rehearing under this sentence, it is referred to as a "sentence four" remand.

The Court may, under the sixth sentence of § 405(g), "on motion for the Secretary made for good cause shown before he files his answer, remand the case to the Secretary for further action by the

Secretary, and it may at any time order additional evidence to be taken by the Secretary, but only upon a showing that there is new evidence which is material and that there is good cause for the failure to incorporate such evidence into the record in a prior proceeding." These remands are called "sentence six" remands.

When a claim is remanded by the Court under sentence four, the remand is a final decision and the judge's order shall state that a judgment should be entered. The Court does not retain jurisdiction to review the proceedings on remand. In *Shalala v. Schaefer*, 509 U.S. 292 (1993), the Supreme Court held that a claimant becomes a prevailing party by obtaining a sentence-four judgment. The time within which to petition for attorney's fees under the EAJA begins on the date of entry of the final judgment in conjunction with the remand order. If the decision on remand is adverse to the claimant, the claimant must file and serve a new summons and complaint.

When a claim is remanded under sentence six, the Court properly retains jurisdiction until after the administrative proceedings on remand. After the final decision of the Secretary upon remand, the Court must take some further action. If the decision is favorable to the claimant, the Court should issue a final judgment in the claimant's favor. The time within which to petition for attorney's fees under EAJA begins on the date of the entry of the final judgment. If the final decision of the Secretary upon remand is adverse to the claimant, then the procedure set forth in LR 7.2(c)(1) and (2) should be followed.

Local Rule 15.1

LR 15.1 FORM OF A MOTION TO AMEND AND ITS SUPPORTING DOCUMENTATION

A party who moves to amend a pleading shall file such motion pursuant to ~~LR 5.2~~ and shall attach a copy of the amended pleading to the original motion. ~~and to each copy of the motion.~~ If the Court grants the motion to amend, the moving party shall file the ~~original of the~~ amended pleading with the Clerk of Court. Any amendment to a pleading, whether filed as a matter of course or upon a motion to amend, must, except by leave of Court, reproduce the entire pleading as amended, and may not incorporate any prior pleading by reference.

[Adopted effective February 1, 1991; amended January 3, 2000]

Local Rule 39.1

LR 39.1 PREPARATION FOR TRIAL IN CIVIL CASES

1. **(a) Setting the Trial Date.** The Judge to whom the case is assigned shall notify counsel in cases set on the Judge's calendar at least 21 days in advance of the date the first case on the civil calendar is to be called. Cases on such calendar may be called on a peremptory basis. The case may be heard by any judge. For information on calendar matters, counsel shall contact the calendar clerk of the Judge who is

to try the case.

(b) Documents to be Submitted for Trial. Unless otherwise ordered, counsel shall file and serve ~~deliver one copy of the following documents to opposing counsel and the original and two copies to the office of the Clerk of Court~~ at least 10 days before the first case on the civil calendar is to be called for trial:

(1) Documents Required for All Trials

(A) Trial Brief.

(B) Exhibit List. A list of exhibits shall be prepared on a form to be obtained from the Clerk of Court. All exhibits shall be marked for identification with Arabic numbers and shall include the case number.

Example: Pltf. or Deft. #1

Civ. 3-84-2

(Multiple parties list name, e.g. Pltf. Smith #1)

These exhibits shall be made available for examination and copying at least 14 days prior to the date the first case on the civil calendar may be called for trial.

(C) Witness List. The list shall include a short statement of the substance of the expected testimony of each witness.

(D) List of Deposition Testimony. The list shall designate those specific parts of deposition to be offered at trial. Any party who wishes to object to deposition testimony shall submit a list of objections at least 5 days before the first case on the civil calendar is to be called for trial.

(E) Motions in Limine.

(2) Additional Documents for Jury Trials. In all jury trials, counsel shall file and serve ~~submit~~ the following documents in addition to the documents listed in LR 39.1(b)(1):

(A) Proposed Voir Dire Questions

(B) Proposed Jury Instructions. Each proposed instruction shall be numbered and on a separate page and shall contain citation to legal authority.

(C) Proposed Special Verdict Forms

(3) Additional Documents for Non-Jury Trials. In all non-jury trials, counsel shall file and serve ~~submit~~ proposed findings of fact and conclusions of law in addition to the documents listed in LR 39.1(b)(1).

(c) **Failure to Comply.** See LR 1.3 for sanctions for failure to comply with this rule.

[Adopted effective February 1, 1991; amended November 1, 1996]

Local Rule 54.3

LR 54.3 TIME LIMIT FOR MOTION FOR AWARD OF ATTORNEY'S FEES

1. (a) Applications for fees under the Equal Access to Justice Act shall be filed within 30 days of final judgment as defined by 28 U.S.C. § 2412.

(b) In all other cases in which attorney's fees are sought, the party seeking an award of fees shall:

(1) Within 30 days of entry of judgment in the case, file ~~pursuant to LR 5.2~~ and serve an itemized motion for the award of fees; or,

(2) Within 15 days after the entry of judgment in the case, serve on all counsel of record and deliver to the Clerk of Court a Notice of Intent to Claim an Award of Attorney's Fees. The Notice shall specify the statutory or other authority for the award of fees and shall identify the names of all counsel who rendered the legal services upon which the claim is based. The Notice may propose a schedule for the presentation of motions for attorney's fees. Thereafter, the Court, or the Clerk of Court acting at the Court's direction, shall issue an order setting a schedule for the submission and consideration of the motion for attorney's fees and all supporting documentation.

(3) For good cause shown, the Court may excuse failure to comply with LR 54.3(b).

[Adopted effective February 1, 1991; amended November 1, 1996; amended January 3, 2000]

1991 Advisory Committee's Note to LR 54.3

In general, applications for attorney's fees should be submitted promptly after a determination of the case on the merits. Prompt submission aids the trial Judge, whose memory of the work of the lawyers is fresh, and facilitates appellate consideration of the whole controversy. As a general procedure, then, the rule requires attorney's fees motions to be submitted within 30 days of the entry of judgment.

The Equal Access to Justice Act, 28 U.S.C. § 2412, requires (and permits) applications for fees to be made "within thirty days of final judgment in the action". "Final judgment" is defined as "a judgment that is final and not appealable, and includes an order of settlement". It is clear that the EAJA contemplates that fee applications will be made either after appeal, or after the time for appeal has run. The rule adopts the statutory time and definitions for EAJA petitions.

Some circumstances (in addition to those relating to the EAJA) may call for a different schedule for the submission of fee motions. For example, if post-judgment motions may significantly affect the results of

the case (and thus the extent of the award), it may be more fair or more efficient to postpone submission and consideration of the fee motions until after those motions are decided. Additionally, in rare instances, delaying the fee consideration until after an appeal is determined may promote justice and efficiency. Subparagraph (b)(2) provides a procedure by which a party seeking fees can ask the Court to establish an alternate schedule. The Notice of Intention to Claim an Award of Attorney's Fees tolls the time for submitting a fee motion, pending the establishment of the schedule by the district court. The drafters contemplate that the Court will, in its schedule, provide adequate time for the preparation and submission of the detailed fee petition.

Finally, Section (b)(3) provides that the Court may excuse failure to abide by the provisions of the rule, for good cause shown. This section does not apply to EAJA petitions, which are governed by the statutory time limit

Local Rule 72.1

LR 72.1 MAGISTRATE JUDGES

(g) Disposition of Civil Matters - Consent of the Parties.

(10) The appellant shall within 30 days of the filing of the notice of appeal file a ~~typewritten~~ memorandum ~~with the Clerk, together with two additional copies~~, stating the specific facts, points of law, and authorities on which the appeal is based. The appellant shall also serve a copy of the memorandum on the appellee or appellees. The appellees shall file an answering memorandum within 30 days of the filing of the appellant's memorandum. The Court may extend these time limits upon a showing of good cause made by the party requesting the extension. Such good cause may include reasonable delay in the preparation of any necessary transcript. If an appellant fails to file the required memorandum within the time provided by this rule, or any extension thereof, the Court may dismiss the appeal

Local Rule 83.10

LR 83.10 SENTENCING PROCEDURES IN CRIMINAL CASES SUBJECT TO THE SENTENCING REFORM ACT OF 1984

(e) Remaining Objections. When sentencing factors or facts material to sentencing cannot be resolved via the presentence conference, counsel for the defendant and counsel for the government shall each file a pleading entitled "Position of the Parties with Respect to Sentencing Factors" in accordance with Guideline §§ 6A1.2 or in accordance with subsequent rules and policies published by the United States Sentencing Commission. This position pleading shall set forth the issues which remain in dispute, the parties' positions with respect to all disputed issues, the extent to which the Court can rely on the presentence report to resolve any objections, and all issues of fact to be tried and determined at the

sentencing hearing. The act of filing this pleading will serve as certification that the party has conferred with opposing counsel and with the U.S. Probation Office in a good faith effort to resolve the disputed matter or matters. ~~The original and two copies of~~ This pleading shall be filed with the Clerk of Court, with one copy served upon the probation office and one copy served upon opposing counsel.